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No. 92-1605

In The

Supreme Court of the United States

October Term, 1992

PATRICK G. WOOSLEY,

Petitioner,

v.

STATE OF CALIFORNIA, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of California

BRIEF OF RESPONDENTS STATE OF CALIFORNIA, et al., IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Is the California Supreme Court's holding, that the California Constitution and statutes did not permit any class claim for refund to provide the basis for the class action portion of this suit for tax refund, an independent and adequate state ground which raises no valid Due Process Clause or Commerce Clause issue?

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JURISDICTION

Petitioner Woosley invokes jurisdiction under 28 U.S.C. § 1257(a). In addition to the fact that there is no final judgment from the California courts in this litigation (see below at pages 6-7, note 3), state respondents argue that there is no jurisdiction because the California holding challenged by the petition is an independent and adequate state ground.

SUPPLEMENTAL STATEMENT OF THE CASE

The California Supreme Court has decided the underlying Commerce Clause issue in favor of petitioner Woosley. Undeterred by this fact, petitioner tries to convince this Court that the California Supreme Court is an active conspirator in a California "scheme to discourage the exercise of federal constitutional rights and to illegally fill its coffers." Pet. 6. Such a serious accusation should be backed by strong support, not just emotional language. Instead, petitioner Woosley repeatedly makes assertions which have no valid basis in the record. To clear the air, respondents will counter some of those statements before turning to the argument in this opposing brief.

Although respondents are not petitioning this Court for relief from the California Supreme Court's holding that certain vehicle license fee statutes violated the Commerce Clause, the current petition's intemperate and abusive language regarding this issue requires some response. Petitioner Woosley excoriates the employees of the California Department of Motor Vehicles as if they were criminal conspirators whose only goal was the knowing and willful deprivation of taxpayers' constitutional rights. See, *e.g.*, Pet. at 8-9, 17, 24. To the contrary, the California Supreme Court has determined that the Department of Motor Vehicles fully complied with the California vehicle license fee statutes, which the court then found to be unconstitutional. App. A, 21a. Under California Constitution article III, section 3.5 (App. G,

269a),[1] employees of that department were barred from determining that those statutes were unconstitutional.

Petitioner Woosley claims that the state's opposition to petitioner's Commerce Clause arguments was "frivolous." Pet. 17. However, the supposed clarity of Commerce Clause discrimination appears to vary from moment to moment, depending upon which perspective petitioner wishes to assume: on the one hand, petitioner argues as if the problems with the Commerce Clause were so clear that they should have been seen by any state employee, down to a newly-hired clerk; on the other hand, from the taxpayers' side, petitioner argues that the Commerce Clause problems were only discernable by a champion such as petitioner Woosley, who was "an attorney, a certified tax specialist and an automobile collector." Pet. 8.

This opposition brief is not the place to reargue the state's Commerce Clause position, which was rejected in the California Supreme Court. However, since petitioner's argument heavily relies on the assumption that the state's Commerce Clause arguments were part of a bad faith scheme to violate constitutional rights, the good faith nature of the state's arguments should be briefly noted. It can be seen from the California Supreme Court's description of the statutory structure that the vehicle license fee statutes were an attempt to provide a workable system with substantially equivalent treatment for

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[1] Citations herein to "App." are to the designated appendix of the petition ("Pet.").

all vehicles. (App. A, 7a-12a, 19a-22a.)[2] Also, this suit involved only taxpayers who were residents of California, who were being taxed for the privilege of using vehicles on the California highways. Accordingly, one of the state's Commerce Clause arguments was based on one of the holdings of this Court in *Goldberg v. Sweet*, 488 U.S. 252 (1989), that the discrimination factor of dormant Interstate Commerce Clause analysis was not violated when the state's tax fell on that state's own resident, "the insider who presumably is able to complain about and change the tax through [that state's] political process"; in the words of this Court, "It is not a purpose of the Commerce Clause to protect state residents from their own state taxes." *Id.* at 266. Although the California Supreme Court rejected this argument, it provides an example of the good faith nature of the arguments which the state made in support of its Commerce Clause position.

Brushing aside the fact that the California Supreme Court held in his favor on the Commerce Clause issue, petitioner claims he was unfairly surprised by that Court's additional holding that, under California law applicable to the times and taxes involved in this case, a class claim may not be used to seek a refund of taxes. Before reaching this holding, the California Supreme Court specifically directed that the parties "file

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[2] As the California Supreme Court noted, the differences in petitioner Woosley's case were "particularly large" (App. A, 4a); this was because he had initiated this test case with the purchase of an old but extremely valuable collector's car, which had appreciated (rather than depreciated) in value.

supplemental briefs on the issue of whether a class claim may be used to seek a refund of taxes." Order of June 25, 1992, quoted Pet. 4. The state's briefing, to which petitioner replied in August 1992, specifically raised the applicability of California Constitution article XIII, section 32 (App. G, 270a), pointed out that the California Supreme Court had never decided the issue being briefed, and argued that earlier California Court of Appeal decisions involving class tax refund claims should be disapproved. Certainly petitioner was disappointed with the court's eventual holding, which relied upon article XIII, section 32 (App. A, 43a, 44a, 48a), confirmed that the class claim for refund issue had never been decided by that court (App. A, 41a-43a), and disapproved the lower appellate court decisions (App. A, 48a). But after petitioner's full opportunity to brief the issue, petitioner was not unfairly surprised.

Petitioner Woosley also repeatedly implies that the State of California argued that the merits of the underlying Commerce Clause issue should be decided for the state because the state could not afford an adverse ruling. The State of California did discuss the amounts potentially at issue in this case when arguing such subjects as determining whether discretionary review was appropriate, deciding whether a class action was properly certified, and recognizing the role and importance of procedural safeguards. But the state never argued to the California Supreme Court, and that court never indicated, that the merits of the Commerce Clause issue could be affected by the total fiscal exposure of the state.

ARGUMENT

THE CALIFORNIA SUPREME COURT'S HOLDING, THAT THE CALIFORNIA CONSTITUTION AND STATUTES DID NOT PERMIT ANY CLASS CLAIM FOR TAX REFUND TO PROVIDE THE BASIS FOR THE CLASS ACTION PORTION OF THIS TAX REFUND SUIT, IS AN INDEPENDENT AND CONSTITUTIONALLY ADEQUATE STATE GROUND; PETITIONER RAISES NO JURISDICTIONAL BASIS FOR SUPREME COURT REVIEW.

A. The California holding at issue rests entirely upon an interpretation of California law.

Petitioner seeks review of a California Supreme Court holding which is based solely on California law. That holding is an independent and adequate state ground.

The California Supreme Court did decide a clearly federal question involving the Commerce Clause, but that question was decided in favor of petitioner Woosley. Also in favor of petitioner Woosley was the California Supreme Court's holding that California law permits tax refund actions to be conducted as class actions when all members of the class have filed timely individual claims for refund.[3]

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[3] The case has been remanded for the trial court to determine, inter alia, whether there are enough such taxpayers to merit proceeding with a class action. App. A, 53a. Thus there is no final California judgment in this case. 28 U.S.C. § 1257 limits the jurisdiction of this Court in state-originated cases to "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had. . . . " "In general, the final-judgment rule has been interpreted 'to preclude review-

Taxpayer Woosley's petition targets the California Supreme Court's holding that California law does not permit this tax refund class action to be based upon a class claim for refund: under this holding, which is purely a matter of California law, each member of any eventual litigating class must have timely filed his or her own individual claim for tax refund.

The California Supreme Court gave the following basis for its holding that petitioner Woosley's purported class claim for tax refund could not serve as a basis for the class action component of this suit:

> "The California Constitution expressly provides that actions for tax refunds must be brought in the manner prescribed by the Legislature. Article XIII, section 32, of the California Constitution provides in this regard: 'After payment of a

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ability . . . where anything further remains to be determined by a state court, no matter how dissociated from the only federal issue that has finally been adjudicated by the highest court of the State.' *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 124 (1945)." *Flynt v. Ohio*, 451 U.S. 619, 620 (1981). More class action issues remain to be determined below, determinations which may give rise to further appeals. If petitioner Woosley can find a federal question in the current California class action holding, might he not be similarly offended in the remaining part of the case? If there were a true federal issue presented by the petition, it would be appropriate to devote this Court's time to establishing that none of the exceptions in the "final judgment" jurisdictional rule would apply here (see *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 478-485 (1975)). However, lack of jurisdiction already is clear in this case from the absence of any valid federal question in the petition, that is, from the fact that the California Supreme Court's class action holding was based upon an independent and constitutionally adequate state ground.

> tax claimed to be illegal, an action may be maintained to recover the tax paid, with interest, *in such manner as may be provided by the Legislature.'* (Italics added [by the court].) This constitutional limitation rests on the premise that strict legislative control over the manner in which tax refunds may be sought is necessary so that governmental entities may engage in fiscal planning based on expected tax revenues. [Citation.]" App. A, 43a.

After a complete review of the statutes which the California Legislature had provided to govern the tax refund procedure (see App. A, 43a-48a), the California Supreme Court held that the Legislature had not authorized petitioner Woosley's class claims for refund, and that "the California Constitution precludes this court from expanding the methods for seeking tax refunds expressly provided by the Legislature." App. A, 48a.[4]

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[4] Before this case, the California Supreme Court "never has considered" the issue "whether a class claim may be filed seeking refunds of vehicle-license fees and use taxes." App. A, 41a. Having reached its holding on this matter of first impression for it, the California Supreme Court then disapproved four lower appellate court decisions to the extent they expressed views to the contrary. App. A, 48a. Petitioner offers no valid support for his inflammatory claims that the California Supreme Court itself has "concocted a new procedural requirement to avoid refunds," thus capping a purported "scheme" by California "to discourage the exercise of federal constitutional rights and to illegally fill its coffers." Pet. 6. State respondents suggest that the California Supreme Court's review of the pertinent provisions of the California Constitution and statutes (see App. A, 42a-48a) provides a quite reasonable and well-balanced interpretation of California law as the basis for its holding.

There is no federal element to this holding. Thus it is an independent state ground which must be adequate to support the holding unless the California jurisdictional rule effectively thwarts the exercise of a federal constitutional right through use of an " ' "arid ritual of meaningless form," . . . and would further no perceivable state interest.' " See *Osborne v. Ohio*, 495 U.S. 103, 124 (1990).

B. Under this Court's *McKesson* decision, the federal Constitution permits the state procedural requirement which forms the basis of the California holding.

In *McKesson Corp. v. Florida Alcohol & Tobacco Div.*, 496 U.S. 18 (1990), this Court held that the Constitution permits the states "to engage in sound fiscal planning" by imposing "various procedural requirements on actions for postdeprivation relief" in tax matters. *Id.* at 44-45. *McKesson* then provides examples of permissible procedural requirements, noting, among others, that the state might "provide by statute that refunds will be available only to those taxpayers paying under protest or providing some other timely notice of complaint; execute any refunds on a reasonable installment basis; [and] enforce relatively short statutes of limitations applicable to such actions. . . . " *Id.* at 45 (footnote omitted). Such procedural protections suffice "to secure the State's interest in stable fiscal planning when weighed against its constitutional obligation to provide relief for an unlawful tax." *Id.*

The present petition challenges a California requirement that, in order to be a member of the class in this class tax refund lawsuit, each class member must have

paid his or her tax and filed a timely individual claim for refund. This procedural requirement does not thwart the exercise of any constitutional right: petitioner Woosley himself is an example of a taxpayer who satisfied the requirement and who has prevailed in the California Courts on the Commerce Clause issue. This California requirement clearly fits within this Court's example in *McKesson* of a requirement for "paying under protest or providing some other timely notice of complaint." *Id.*[5]

Petitioner, attempting to avoid this precise application of *McKesson*, bases his *McKesson* argument not upon the *type* of procedural requirement imposed by California but upon the alleged *time* of its imposition. Petitioner bases this purported distinction of *McKesson* solely upon the *McKesson* opinion's framing of its examples as stating what "the State" might do "in the future." *Id.*; see Pet. 7. This Court's use of the future tense simply is a reflection of the facts of the *McKesson* case. As this Court specifically noted, "in the present case" Florida had "fail[ed] to avail itself of certain of these methods of self-protection. . . . " *Id.* This is the reason the Court was explaining to Florida what it might do "in the future" to protect its fiscal planning interests.

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[5] Federal taxpayers also must file individual claims for refund before joining together in class actions for refund of federal taxes. See *Heisler v. United States*, 463 F.2d 375 (9th Cir. 1972), cert. denied, 410 U.S. 927 (1973); *Saunooke v. United States*, 8 Cl.Ct. 327 (Cl.Ct. 1985); *Sutherland v. Egger*, 605 F.Supp. 28, 30 (W.D. Pa. 1984). Thus the California requirement cannot rationally be classified as a " 'novel procedural doctrine[ ].' " See Pet. 9.

In any event, the California Supreme Court's challenged holding in the present case is not the retroactive application of a newly concocted jurisdictional requirement. It is simply the California Supreme Court's interpretation of what the California Constitution and statutes required when petitioner was paying his taxes, filing his administrative claims for tax refund, and bringing his tax refund action in court. Article XIII, section 32 of the California Constitution was enacted in 1974, years before petitioner's tax liability arose. To determine what the Legislature had provided as to tax refund claims and tax refund suits, the California Supreme Court looked to the statutes as they existed at the times the various functions were performed in this case (see App. A, 43a-48a); for example, at one point that court specifically referred to "the entire statutory scheme that governed requests for refunds of sales and use taxes when Woosley's claim was filed in 1977." App. A, 45a. The current petition for certiorari totally fails to drag the California holding out from the clear protective coverage of this Court's decision in *McKesson*.[6]

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[6] Although it was unclear from the *McKesson* record whether Florida law required tax payments to be made under protest in order to perfect the right to sue for refund (*Id.* at 24 n. 4), the *McKesson* decision made clear that "upon remand the State may invoke, as an independent basis for refusing to provide a refund [which was being sought on Commerce Clause grounds], petitioner's failure to comply with a notice requirement that was in effect at the time of petitioner's tax payments." *Id.* at 25 n. 4. This holding clearly contemplated the ability of the Florida courts to consider, years after the tax payment, whether Florida statutes provided, at the time of such payment, for payments to be made under protest.

California's requirement, that tax refund claims be filed on an individual (nonclass) basis, allows the state to evaluate the fiscal situation and explore possible changes in state law based upon a review of the individual facts of each claimant. It is precisely the type of procedural rule which is validated in *McKesson* as being supported by a proper state interest. Thus this rule is both an independent and an adequate state ground.

C. The federal Constitution does not require that California's holding be applied solely prospectively.

The California Supreme Court considered petitioner's argument that the Court's interpretation of the California Constitution and statutes should be applied prospectively only. That argument was rejected on the basis that, under established California practice, a statutory interpretation is not limited to prospective application when it merely (1) disapproves prior lower appellate courts' misconstruction of California law and (2) correctly applies California law as it had existed "at the time here in question." App. A, 50a-51a. Again, this is an application of California law which is well within the jurisdiction of the California Supreme Court. Petitioner argues that the case "cries out for prospective-only application" (Pet. 15), but petitioner is unable to present any authority indicating that solely prospective application of the California Supreme Court's holding regarding this California procedural rule was required by the United States Constitution. "When questions of state law are at issue, state courts generally have the authority to determine the retroactivity of their own decisions." *American Trucking*

Assns., Inc. v. Smith, 496 U.S. 167, 177 (1990) (Opinion of O'Connor, J.).[7]

D. Neither the Commerce Clause basis of the claim for refund nor California Constitution article III, section 3.5 affects the validity of the California requirement of individual (nonclass) claims for tax refund.

Petitioner Woosley attempts to frame a separate Commerce Clause argument on the basis of his inflammatory accusations that the California Supreme Court is a part of a conspiracy to deprive taxpayers of their Commerce Clause rights. Pet. 6, 23-25. The California Supreme Court, which after all held in favor of petitioner on the underlying Commerce Clause question, recognized that the procedural limitation flowing from California Constitution article XIII, section 32 "rests on the premise that strict legislative control over the manner in which tax refunds may be sought is necessary so that governmental entities may engage in fiscal planning based on expected

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[7] *Brinkerhoff-Faris Co. v. Hill*, 281 U.S. 673 (1930) (cited Pet. 14-15), is not on point. In that case the effect of the state court's decision was that (1) under prior holdings no administrative remedy had been available before the decision, and (2) it was too late to apply for it after the decision, thus resulting in a denial of due process. In the present case all taxpayers had the administrative remedy available to them through individual claims for refund. This Court in *Brinkerhoff-Faris* specifically noted that "the mere fact that a state court . . . has overruled principles or doctrines established by previous decisions on which a party relied, does not give rise to a claim under the Fourteenth Amendment or otherwise confer appellate jurisdiction on this Court." *Id.* at 680 (footnote omitted).

tax revenues. [Citation.]" App. A, 43a. As noted above, the *McKesson* case involved a violation of the Commerce Clause, yet this Court made clear in *McKesson* that the involvement of constitutional claims does not prevent the states from protecting their fiscal planning through use of reasonable procedural safeguards which can provide "an independent basis for refusing to provide a refund." 496 U.S. at 25 n. 4. Similarly, in *Swaggart Ministries v. Cal. Bd. of Equalization*, 493 U.S. 378, 397-99 (1990), this Court confirmed, as a proper "application of state procedural law" (*id.* at 398), the validity of California's requirement that any constitutional ground must be specifically raised in the taxpayer's administrative claim for tax refund before the California courts will have jurisdiction to consider it. Thus, application of a procedural rule which is valid under *McKesson* will not violate the Commerce Clause even when such application bars all consideration of a Commerce Clause issue. Petitioner Woosley, who in tnis case received a *favorable* Commerce Clause holding from the California Supreme Court, has no Commerce Clause complaint.

Article III, section 3.5 of the California Constitution bars administrative agencies from declaring statutes unconstitutional. Under the *McKesson* rule, that fact does not mean the state cannot require any prelitigation notice of constitutional issues. A claim for refund must still specify constitutional grounds along with other grounds if it is to provide the fiscal planning function validated in *McKesson*. The California Supreme Court has determined that California law requires each taxpayer who wishes to make a constitutional challenge to file an individual tax refund claim setting forth the details of his or her claim.

This procedural requirement clearly serves the purpose, the validity of which was confirmed in *McKesson*, of enabling the state "to engage in sound fiscal planning." 496 U.S. at 44.[8]

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[8] The California courts have specifically recognized that, even with article III, section 3.5's limitations on the administrative agencies, the California requirement that a tax refund claim designate all constitutional grounds "allows the state to evaluate the merits of the taxpayer's claim and to plan fiscal policy accordingly." *Shiseido Cosmetics (America) Ltd. v. Franchise Tax Bd.*, 235 Cal.App.3d 478, 489 (1991), cert. denied, ___ U.S. ___, 112 S.Ct. 2995 (1992). In addition, the requirement that such claims be designated permits the administrative agency to determine whether the statutes are susceptible of a construction that may avoid the constitutional problem. In the present case it was taxpayer Woosley's position throughout the entire California administrative process and court litigation that the statutes could be construed as being valid, and that it was the administrative constructions of those statutes which produced unconstitutional results. Under those circumstances it was clearly reasonable for California law to require that the administrative agencies have the chance to reconsider their own interpretation of the California statutes under the facts applying to each taxpayer. (It was the California Supreme Court which first held that the Department of Motor Vehicles had accurately construed the vehicle license fee statutes, but that the statutes themselves violated the Commerce Clause. See App. A, 19a-32a.)

E. The United States Constitution does not require the states to permit any class actions for tax refund; California's reasonable restriction on when such class actions will be allowed is a purely state procedural requirement which constitutes an independent and adequate state ground that is not reviewable in this Court.

Finally, it is significant that petitioner Woosley can muster no argument that the federal Constitution requires the states to provide for the litigation of tax refund actions as class actions. There is no such requirement. In an analogous area involving the federal Tax Injunction Act (28 U.S.C. § 1341), this Court has held, in cases involving constitutional issues, that the normal refund procedures provided to individual taxpayers by the California Legislature are plain, speedy and efficient. *Franchise Tax Board of Cal. v. Alcan Aluminium*, 493 U.S. 331, 338 (1990), citing *California v. Grace Brethren Church*, 457 U.S. 393, 417 (1982). Class action procedures are not necessary to make the taxpayers' court remedies plain, speedy and efficient. *Mandel v. Hutchinson* 494 F.2d 364 (9th Cir. 1974); accord, *Waldron v. Collins*, 788 F.2d 736, 738 (11th Cir. 1986), cert. denied 479 U.S. 884.[9] Now the California Supreme Court has held that California law permits tax refund actions (including, possibly, this

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[9] In fact, the class action aspects of petitioner Woosley's tax refund suit have complicated the matter so as to consume much of the time it has taken to reach this point. It is estimated that the constitutionality of the challenged statutes could have been determined more than a decade ago if petitioner Woosley had just brought this action as a test case filed as an individual taxpayer.

action) to be litigated as class actions. That court also has held that the class action portion of this action cannot be based upon petitioner Woosley's attempted administrative class claim for tax refund, for the California Constitution and statutes did not permit such class claims for refund at the time in question. This is matter of California procedural law which is not a proper subject for United States Supreme Court review.

CONCLUSION

For the reasons given above, it is respectfully submitted that the petition for writ of certiorari should be denied.

Dated: April 30, 1993.

Respectfully submitted,

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